transfers the Mark to another person (*R.J. Reuter Co. Ltd. v. Ferd Mulhens*[1]). When the Custodian took no action to stop the importation of the Agfa products of the appellants and when he withdrew the applications for registration of the Agfa Trade Marks of I.G. Farben it did not mean that the Custodian abandoned or disclaimed the Mark. What the Custodian abandoned was his right to transfer the Mark to another person or to grant licence in respect of its use in Singapore.

The Mark has been in use for some considerable years, since 1897 to be precise. The appellants claim that "Agfa" is part of their name and they are entitled to market goods bearing that word. On examination of the evidence, however, one finds that the word "Agfa" is the initials of the Anilin Co. who were the original owners of the Mark and the factory at Wolfen has "Agfa" as part of its name only when the factory was under Soviet control and the appellants used the word "Agfa" as part of their name when they were formed in 1954. It is clear that the appellants have no title to the word "Agfa" and it would appear that that word is adopted by the appellants in order to trade on the goodwill which has been built up by the Anilin Co. and by I.G. Farben.

From the submissions of Mr. Gould it appears that Mr. Gould is not quite sure whether the appellants are exclusively entitled to registration. He submits that it is possible that both the appellants and the respondents are entitled to registrations on the ground of honest concurrent user. But is there an honest concurrent user on the part of the appellants? I do not think so for the reasons which I have set out in the last sentence of the preceding paragraph.

I am of the opinion that the Registrar is perfectly right in deciding that the application of the respondents should proceed as the respondents are the successors in title to the Mark and the appellants have no merits or rights whatever in the Mark.

The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Drew & Napier.*

CHEONG CHIN NAM (PROPERTY) LTD. v. CHIO GIOK POH (m.w.)

[O.C.J. (Tan Ah Tah J.) June 25, 1958]

[Singapore — Suit No. 1186 of 1956]

Landlord and Tenant — Claim for possession of land and premises — Whether or not premises are buildings of a "temporary character" — Test — Demolition — Whether necessary in the interest of town improvement — Lay-out plans approved by Singapore Improvement Trust — Plan forming part of General Improvement Plan — Control of Rent Ordinance (Cap.242), s.15(1)(g), (i) and (k) — Singapore Improvement Ordinance (Cap.259), s.62(8).

The landlords in this case sought to recover possession of certain lands and premises situate in Bukit Timah Road from the defendant, their tenant, and relied on section 15(1) (g), (i) and (k) of the Control of Rent Ordinance. The buildings on the site in question were erected during the Japanese occupation for the purposes of an amusement park, and were run by a partnership, the defendant's husband being one of the partners. The amusement park was closed when the Japanese surrendered, but towards the end of 1946 it began to be used as a market and had been so ever since. The business was sold to a nominee of the defendant's husband in 1947 and in 1949 the defendant was registered as the sole proprietress and she also became the plaintiffs' tenant.

Evidence was called on behalf of the plaintiffs to show that they had a building scheme or plan in accordance with that scheme they proposed to erect two blocks of buildings consisting of shop-houses together with a market on the lands in question. The lay-out plans relating to the buildings had been approved by the Singapore Improvement Trust and had been embodied in the General Improvement Plan.

The learned Judge viewed the buildings on the site in the company of counsel for both parties and an architect. The defendant did not dispute that the site was required by the plaintiffs for the purposes of their scheme and that such purpose formed an essential part of a building plan or project of a permanent character for which plans had been approved by the local authorities; she only disputed the allegation that the premises standing on the site consisted of buildings of a temporary character and she called evidence to show that the intention was that the buildings should remain on the land for a long time.

Held: (1) there is no single test which can be applied in all cases and which will result in the determination of the question whether or not the premises are buildings of a temporary character. The intention of the person who erects the building is not conclusive on the point. In this case, after the character of the buildings and the evidence, including the evidence of expert witnesses, have been considered, the conclusion is reached that the buildings in question are buildings of a temporary character;

(2) when a lay-out plan has been approved by the Singapore Improvement Trust and embodied in the

General Improvement Plan the new lay-out must be taken to be *prima facie* an improvement on the existing lay-out in Singapore. It does not matter whether the plan or scheme was initiated by a local authority or a private individual. It is, however, open to any litigant to show that in fact the new lay-out does not constitute an improvement in town planning, or town improvement. In the present case the defendant had failed to do so.

CIVIL SUIT.

K. Gould for the plaintiffs.

J.L.P. Harris for the defendant.

Cur. Adv. Vult.

Tan Ah Tah J.: — In this action the plaintiffs claim possession of certain lands and premises situate in Bukit Timah Road, Singapore. The relationship between the plaintiffs and the defendant is that of landlord and tenant and the lands and premises come within the protection of the Control of Rent Ordinance. In making their claim for possession the plaintiffs rely on paragraphs (g), (i) and (k) of section 15 (1) of the Ordinance.

The various paragraphs of section 15 (1) of the Ordinance set out the circumstances in which an order or judgment for the recovery of possession of premises comprised in a tenancy may be made. It is convenient in this case to deal first with the claim in relation to paragraph (i), which reads as follows:

" (i) where the premises consist in whole or in part of a building or buildings of a temporary character and the site thereof is required by the landlord for the erection of a building or buildings of a permanent character for which plans have been approved by the local authority or the site thereof is required by the landlord for any purpose which forms an essential part of any building plan or project of a permanent character for which plans have been approved by the local authority:

Provided that the Court may stay or suspend the execution of the order or judgment or postpone the date of possession for such period not exceeding one year and subject to such conditions, if any, as it thinks fit."

According to the statement of agreed facts most of the buildings on the site in question were erected in 1944 during the period of Japanese occupation. They were apparently erected in pursuance of an order of a Japanese military unit for the purpose of carrying on the business of an amusement park. The defendant's husband interested himself in this project and he and his business associates caused to be erected a theatre (now known as the Tiong Hoa Theatre but used as a cinema) and other buildings which were to be used for the purposes of the amusement park. At the commencement, the business of the amusement park was carried on by a partnership, the defendant's husband being one of the five partners. Subsequently a limited company was formed in which the partners were appointed directors, the principal object of the company being to acquire and take over the business of the amusement park. The legal relationship between the partnership and the company is somewhat vague but so far as this case is concerned it is perhaps sufficient to state that until the business was sold the five partners appeared to have an interest in it.

When the Japanese surrendered in September 1945 the amusement park was closed. Subsequently it appeared to have been re-opened but towards the end of 1946 the place ceased to be used as an amusement park; it began to be used as a market and has been so used ever since.

In May 1947 the business was sold to a nominee of the defendant's husband. Between May 1947 and April 1948 the business practically came to a standstill while the buildings were being repaired. The defendant's husband admitted that the buildings were in a bad state of repair and required rehabilitation. On the 1st October 1949 the defendant was registered as the sole proprietress of the business and she also became the plaintiffs' tenant.

The evidence called on behalf of the plaintiffs shows that they have a building scheme or plan and that in accordance with the scheme they propose to erect on the lands in question two blocks of buildings, one consisting of 13 shop-houses and the other of 14 shop-houses, together with a market. It is not disputed that the site is required by the plaintiffs for this purpose and that such purpose forms an essential part of a building plan or project of a permanent character for which plans have been approved by the local authorities. What is disputed is the allegation that the premises standing on the site consist of buildings of a temporary character. It is therefore necessary on this aspect of the case to determine whethor or not the premises are buildings of a temporary character. In my opinion there is no single test which can be applied in all cases and which will result in the determination of this question. The intention of the person who erects the building is by no means conclusive on the point. A person of poor means may erect a ramshackle building with the intention of using it as a permanent residence for his family but this does

not mean that it is not a building of a temporary character. So when the defendant's husband stated in the course of his evidence that the intention was that the buildings should remain on the land for a long time this statement is not to be taken to be decisive of the matter.

In considering the matter I have had the advantage in this case of viewing the buildings on the site in the company of counsel for both parties and Mr. Ho Kok Hoe, a registered architect. Near the entrance in Bukit Timah Road there was a row of buildings. These had cement floors while the roof, which consisted of zinc sheets nailed on to rafters, was supported by timber posts. The ceilings were made of various materials such as hardboard, cellotex and timber boardings. In my opinion these buildings were clearly of a temporary character. Further inside the park there were two rows of buildings, one of which is numbered 1 to 9 on the plan (Exhibit P3) while the other is numbered 27 to 38. These two rows of buildings were of similar construction the main features of which were as follows. The wall plate was made from bintang poles which is a type of soft wood. The posts between the buildings were also made from bintang poles. The partitioning walls consisted of planks and various other materials, such as cardboards, hardboards and pieces of zinc sheets coupled with hardboards. According to Mr. Ho Kok Hoe none of the materials used for the partitioning walls were of a durable nature and I was of the same opinion. Some of the posts and side planks in these buildings were made from parts of soap boxes. The roof was made from zinc sheets which had not been painted with rust-proof paint. The eaves were made of light timber battens covered with malthoid roofing papers. Mr. Ho Kok Hoe said that the malthoid roofing papers were brittle, not durable, and that if they were bent they would crack. He also said that they could not stand exposure to sun and rain. The floor was of cement but the rendering of cement was on natural ground instead of on a concrete floor which would usually be the case when a permanent building is erected.

It should be added at this stage that the buildings numbered 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 50, 51 and 52 were of similar construction to the two rows of buildings which have just been described. Mr. Ho Kok Hoe stated that in his opinion the two rows of buildings were temporary buildings. Having considered his evidence and that of Mr. Phipps, and also having seen the buildings for myself, I have reached the conclusion that all the buildings referred to in this paragraph are buildings of a temporary character.

As to the Tiong Hoa Theatre it is a timber framed structure with a zinc roof. At the time of the inspection part of the roof was in a bad condition especially on the north side of the theatre where a number of malthoid roofing sheets had been nailed down to cover the existing roof. This appeared to be due to the fact that the roof was leaking at that part. Mr. Ho Kok Hoe in the course of his evidence mentioned more than once that the roof was in a very bad condition. He said that he had seen canvas placed over the roof to prevent leaking. The side walls were made of various materials such as zinc sheets, planks, hardboards and some old plank doors. Mr. Ho Kok Hoe stated that hardboards are neither waterproof nor durable when exposed to the elements. With regard to the foundations, there was a concrete platform with timber posts sunk into the ground. Mr. Ho Kok Hoe expressed the opinion that the theatre was a temporary structure. He said that if it were a permanent building, reinforced concrete columns, and not timber posts, would have been used. I should add that when Mr. Ho Kok Hoe stated his opinion he did not give me the impression that he was paying regard solely to the fact that timber posts had been used; I think he took a number of factors into consideration before expressing his views. Having seen the theatre for myself and having considered the evidence of Mr. Ho Kok Hoe, Mr. Phipps and the defendant's husband I have come to the conclusion that the theatre is a building of a temporary character.

With regard to the other buildings on the site to which I have not specifically referred, I am also of opinion that they are buildings of a temporary character.

I now turn to consider the plaintiffs' claim in relation to paragraph (k) of section 15 (1) of the Ordinance. Paragraph (k) reads as follows:

> " (k) where the landlord of any premises intends to demolish the premises or any part thereof for the purpose of rebuilding on the site or part thereof and the Court is satisfied that such demolition is necessary in the interests of public health or town improvement either by reason of the condition of the building or otherwise."

It has been proved that the plaintiffs intend to demolish the premises for the purpose of

rebuilding on the site or part thereof. The question that arises for determination in this case is whether the plaintiffs have satisfied the Court that such demolition is necessary in the interests of town improvement.

Now it is clear from the evidence of Mr. Ho Kok Hoe and Mr. Ephraums, who is an officer of the Rural Board, that the plaintiffs' lay-out plans relating to the two blocks of 13 and 14 shop-houses respectively and the market had been approved by the Singapore Improvement Trust. It was only after they had been so approved that they were sent to the Rural Board. That was the procedure as described by Mr. Ephraums who added that the plans now form part of the General Improvement Plan. There is statutory authority for Mr. Ephraums' statement as it is provided by sub-section (8) of section 62 of the Singapore Improvement Ordinance (Cap.259) that when any plan has been aproved by the Board of Trustees of the Singapore Improvement Trust under that section, the Board shall forthwith embody such plan in the General Improvement Plan. It is of some significance, in my view, that the General Improvement Plan has been given that name by the legislature. Having regard to these considerations, it is clear, in my opinion, that when a lay-out plan has been approved by the Singapore Improvement Trust and embodied in the General Improvement Plan the new lay-out must be taken to be *prima facie* an improvement on the existing lay-out in Singapore. It does not matter, in my view, whether the plan or scheme was initiated by a local authority or a private individual. Once the plan has been approved and embodied in the General Improvement Plan the result which I have stated follows. It is of course open to any litigant to show that in fact the new lay-out does not constitute an improvement in town planning, or, to use the words of paragraph (k), a town improvement. In the present case the defendant has failed to do so. It would have been surprising if she had succeeded in doing so as it is clear that the replacement of the buildings now standing on the site by two blocks of shop-houses and a market with proper road access must result in town improvement. A comparison of the existing buildings with what is proposed to be erected can only lead to the conclusion that they should be demolished in the interests of town improvement. I am satisfied that the demolition of the existing buildings is necessary in the interests of town improvement.

It follows from the conclusions which I have reached that the plaintiffs have brought themselves within paragraphs (i) and (k) of section 15 (1) of the Control of Rent Ordinance. There must therefore be judgment for the plaintiffs with costs, the defendant to give possession of the premises to the plaintiffs on or before the 31st July 1958. There will also be judgment for the plaintiffs for mesne profits at the rate of $260 per mensem from the 1st May 1958 up to the date of delivery up of possession to the plaintiffs. There will be a declaration that this judgment shall not be enforceable against any sub-tenant of the defendant.

In the circumstances I do not consider it necessary to deal with the claim in relation to paragraph (g) of section 15 (1) of the Ordinance.

Order accordingly.

Solicitors: *Rodyk & Davidson; Braddell Bros.*

CHEAH WAI POH v. CHIN BROTHERS & CO. LTD.

[O.C.J. (Syed Sheh Barakbah J.) August 8, 1958]

[Ipoh — Civil Suit No. 120 of 1958]

Arbitration — Stay of proceedings — "Steps in the proceedings" — Unconditional appearance, if waiver — Arbitration Ordinance, 1950, s.5(1).

Entry of unconditional appearance is not "taking any other steps in the proceedings" within the meaning of section 5(1) of the Arbitration Ordinance. "Steps in the proceedings", in the technical sense, means an application to the Court such as taking out a Summons; the act must display intention to proceed with the Suit and to give up the right to have the matter disposed of by arbitration.

Cases referred to:—

(1) *Sheldon v. Brown Bayley Ltd. & Anor.*, (1953) 2 All E.R. 894.
(2) *In re Orr Ewing*, 22 Ch.D. 456.
(3) *Smurthwaite & Ors. v. Hannay*, (1894) A.C. 494.
(4) *Bhowanidas-Ramgobind v. Pannachand-Luchmipat & Anor.* A.I.R. 1925 Cal. 801.
(5) *Austin & Whitley Ltd. v. S. Bowley*, 108 L.T.R. 921.
(6) *Zalinoff v. Hammond*, (1898) 2 Ch. 92.
(7) *Lane v. Herman*, (1939) 3 All E.R. 353.
(8) *Ives & Barker v. Willans*, (1894) 2 Ch. 478.